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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/541,787

07/01/2006

Alexander Josef

0-05-111

4128

42009

7590

02/26/2010

KEVIN D. MCCARTHY

ROACH BROWN MCCARTHY & GRUBER, P.C.

424 MAIN STREET

1920 LIBERTY BUILDING

BUFFALO, NY 14202

EXAMINER

LANGEL, WAYNE A

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

02/26/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/541,787	<b>Applicant(s)</b> JOSEF ET AL.	
	<b>Examiner</b> Wayne Langel	<b>Art Unit</b> 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-11-05, 9-28-05 and 5-9-06</u> . | 6) <input type="checkbox"/> Other: ____.  |

Art Unit: 1793

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aijala in view of Stern et al. Aijala discloses a fertilizer formulation based on calcium and/or magnesium and phosphate ion, wherein the phosphate ion may be phosphoric acid and potassium phosphate. (See col. 2, line 60 through col. 4, line 39.) The difference between the formulation disclosed by Aijala, and that recited in applicants' claims, is that Aijala does not disclose that the calcium should be in the form of monocalcium phosphate and monomagnesium phosphate, respectively. Stern et al teach at col. 4, lines 45-57, that monocalcium phosphate is a known common fertilizer. It would be obvious from Stern et al to include the calcium in the composition of Aijala in the form of monocalcium phosphate, since it would be expected that the calcium could be in any known or suitable form, and especially since Stern et al teach that monocalcium phosphate is a known common fertilizer.

Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/05913 in view of Stern et al, further in view of Aijala. WO 01/05913 discloses a fertilizer composition which may be sodium or potassium phosphate or calcium phosphate. (See the Abstract.) The difference between the compositions disclosed by WO 01/05913, are that WO 01/05913 does not disclose that the phosphates should be employed as mixtures, and that phosphoric acid should be included in the composition.

Art Unit: 1793

Stern et al discloses in col. 4, lines 45-59 that known fertilizers are conventionally employed as mixtures thereof, and Aijala discloses in the paragraph that phosphoric acid in combination with potassium phosphate is a known fertilizer. It would be obvious from Stern et al in view of Aijala to provide the calcium phosphate and sodium or potassium phosphate in the form of a mixture and to include phosphoric acid in the mixture, since Stern et al establish that known fertilizers are employed as mixtures thereof, and Aijala discloses that phosphoric acid in admixture with potassium phosphate is a known fertilizer.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The recitation of "chosen from among...or" is improper Markush or alternative terminology.

The other references are made of record for disclosing various phosphate fertilizers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Langel whose telephone number is 571-272-1353. The examiner can normally be reached on Monday through Friday, 8 am - 3:30 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone

Art Unit: 1793

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Wayne Langel/  
Primary Examiner, Art Unit 1793